

tower located at Bryan's proposed studio site to his proposed tower site. (SBH Ex. 17, p. 2, Figure 1) Instead, in order to obtain a line of sight path between the studio and transmitter sites, it would be necessary for Bryan to install a tower at his studio site of sufficient height to place the STL antenna 134' above ground level. (SBH Ex. 17, p. 2, Figure 1) In an Engineering Statement, offered by Bryan in response to Mr. Crowley's Engineering Statement, Bryan's expert witness, Richard Mertz, indicated that he has made an independent review of Mr. Crowley's Engineering Statement and "concurs that intervening terrain will attenuate the proposed microwave STL signal." While Mertz went on to assert that "the terrain features along the path will attenuate the signal to some degree, but will not necessarily prevent the use of a microwave STL," he offered no analysis or evidence, whatsoever, to support his conclusion in this regard. (Bryan Ex. 10, pp. 3-4) Mertz did not dispute Mr. Crowley's conclusion that a line of sight path could not be obtained. Id.

48. Bryan testified that, should he be unable to obtain a line of sight path between his transmitting tower and the existing 30 foot tower at his proposed studio, he would install an intermediate receive/transmit point at another existing tower, which he owns and currently utilizes for a shortwave repeater. (Tr. 100) Bryan was confident that an intermediate receive/transmit point, located at this existing site, would provide a line of sight path to both his studio and his

transmitter sites. (Tr. 100) Because he owns the tower, Bryan would not have any rental costs and would only incur the costs of purchasing and installing the equipment necessary for the intermediate receive/transmit point. (Tr. 101) The cost of equipment to implement the intermediate receive/transmit point would include \$ 8,250.00 for a Moseley STL composite system (SBH Ex. 5, p. 25) and \$ 1,260 for two Scala Parareflector antennas (SBH Ex. 5, pp. 12, 25, 28), as well as \$ 462.80 for the associated jacks and hanging and grounding hardware (Bryan Ex. 9, p. 11) for a total of \$ 9,972.80. In addition, a sufficient amount of Andrew 1/2" heliax transmission line will be required at \$ 2.50 per foot. (Bryan Ex. 9, p. 11)

The Proposed Bank Loan.

49. The December 12, 1991 letter from the Greene County Bank to Darrell Bryan references a proposed loan to Bryan to meet his estimated costs in constructing and operating the proposed FM station at Tusculum, Tennessee. (SBH Ex. 6, pp. 10, 18) The proposed loan from the Greene County Bank was the only source of funding available to Bryan, as of January 9, 1992, to meet his estimated costs of constructing and operating the proposed station for three months without revenue and Bryan so represented in certifying and filing his Application. (SBH Ex. 6, p. 10) The December 12, 1991 letter of the Greene County Bank constitutes the only documentation of the availability of the proposed bank loan that Bryan had in his possession at the time he certified his financial qualifications on January 6, 1992, and

continued to be the only documentation of the availability of the proposed bank loan that Bryan had in his possession prior to September 9, 1993. (SBH Ex. 6, p. 10)

50. In approaching the Greene County Bank in December, 1991 Bryan told Stan Puckett, the Bank's President, what he intended to do and what it would cost to build the station and requested that the Bank provide him with a letter reflecting the Bank's willingness to loan him \$ 175,000.00 to cover the costs of construction and initial operation of the proposed station. (SBH Ex. 6, pp. 11, 24) In approaching the Bank in December, 1991 Bryan did not provide the Bank with a copy of his Itemization of Costs, any written budget for the proposed station or anything else in writing. (SBH Ex. 6, p. 11) At the time of its discussions with Bryan in December, 1991, the Bank had on hand and reviewed Bryan's May 16, 1991 Financial Statement (SBH Ex. 12) and a September 30, 1991 Statement of Assets and Liabilities for Burley Broadcasters, Inc. (SBH Ex. 13). (SBH Ex. No. 7, p. 11; Tr. 51-53) Bryan also prepared a pro forma financial statement, which was a projection of revenues for the FM station and which is no longer in his possession. (Tr. 54-55) It was not given to the Bank; they possibly reviewed it, but did not keep it. Id.

51. Mr. Puckett indicated that to the best of his knowledge, no financial statement for Darrell Bryan was delivered to the Bank prior to December, 1991, other than Bryan's May 16, 1991 Financial Statement. (SBH Ex. No. 7, p. 16) With the exception of

the pro forma projection of revenues, Bryan's May 16, 1991 Financial Statement and the September 30, 1991 Statement of Assets and Liabilities for Burley Broadcasters, Inc., Bryan did not prepare any other financial statements or balance sheets relating to the FM station or his own personal finances prior to the time he filed his Application. (Tr. 55)

52. At the time of its discussions with Bryan in December, 1991, the Bank had an outstanding loan to Burley Broadcasters, Inc. (SBH Ex. No. 7, p. 8-9) The \$ 296,000.00 liability listed in response to Item 29 of Bryan's May 16, 1991 Financial Statement (SBH Ex. 12) refers to this outstanding loan to Burley Broadcasters, Inc. of which Bryan is a personal guarantor. (SBH Ex. No. 7, p. 9; Tr. 56-57)

53. Bryan's Personal Financial Statement listed a total of \$ 544,000.00 in liabilities, \$ 248,000.00 of which were outstanding loans secured by mortgages on real estate and \$ 296,000.00 of which was the outstanding loan from Greene County Bank to Burley Broadcasters, Inc. (SBH Ex. 12. p. 1; Tr. 56-57) Bryan's Personal Financial Statement reflects at Item 1 and 7 and Schedule 4 that Bryan had only \$ 7,500.00 in liquid assets, which were held in the form of cash, mutual funds and the cash surrender value of insurance. (SBH Ex. 12) While Bryan's Personal Financial Statement reported (at Item 33) that he had a net worth of \$ 323,500.00, this representation was premised upon his underlying valuation (at Item 8 and Schedule 4) of his stock in Burley Broadcasters, Inc. at \$ 500,000.00 and his valuation

(at Schedule 5) of his real estate holdings at \$ 320,000.00. (SBH Ex. 12)

54. Schedule 4 of Bryan's Financial Statement lists 300 shares of stock of Burley Broadcasters, Inc., which are pledged to the Bank to secure payment of the loan. (SBH Ex. 12. p. 2) Bryan listed the "fair market value" of these shares as \$ 500,000.00. (SBH Ex. 12. p. 2; Tr. 57) Mr. Puckett confirmed Bryan had supplied the Bank with no appraisal for the stock of Burley Broadcasters, Inc. nor had the Bank obtained any independent appraisal of the value of this stock. (SBH Ex. No. 7, pp. 10, 17) Furthermore, Bryan acknowledged that he had never had any appraisal done on the stock and that he did not talk to any third party in an effort to determine its present market value. (Tr. 58) Instead, the valuation placed on the stock was something he came up with entirely on his own. (Tr. 58)

55. With regard to the real estate listed at Schedule 5 of Bryan's Financial Statement (SBH Ex. 12, p. 2), Mr. Puckett confirmed that Bryan supplied no appraisal on either the Christy Court or the Snapps Ferry Road properties nor has the Bank obtained an independent appraisal of the value of those properties. (SBH Ex. No. 7, pp. 11-12, 17-18)

56. Bryan also had a "Statement of Assets and Liabilities" for Burley Broadcasters, Inc., dated September 30, 1991 (SBH Ex. 13), on file at the Bank. (Tr. 53) Bryan indicated that this Statement was prepared by WSMG's accountants and that the information was current, as of the date indicated, to the best of

his knowledge. (Tr. 53-54; 69-70) The "Statement of Assets and Liabilities" reflects that the total assets of Burley Broadcasters, Inc. are valued at only \$ 135,556.90, including \$ 28,143.94 in accounts receivable and \$ 77,850.00 in goodwill, while its liabilities exceed \$ 314,000.00. (SBH Ex. 13) The values listed on Exhibit 13 were included by the accountants, based on information Bryan gave them that year. (Tr. 69-70)

57. Bryan identified a "Tangible Personal Property Schedule," filed by Burley Broadcasters, Inc. for the 1993 tax year, which is filed annually in Greene County for the purpose of personal property assessment by the County. (SBH Ex. 14; Tr. 64) He identified the signature on the Schedule as that of Timothy J. Meredith, who is an accountant for Burley Broadcasters, Inc. (Tr. 65) Bryan sends the information to the accountant, who does all the bookkeeping and accounting. (Tr. 69) Group One and Group Nine are the only categories in which he has listed any property. (Tr. 65) The "Tangible Personal Property Schedule" reflects that Burley reported a total cost of vehicles (Group Nine) of \$ 17,997.00 and a total cost of all furniture, equipment, fixtures and other property (Group One) of \$ 28,797.00. (SBH Ex. 14, p. 1; Tr. 67) This "Tangible Personal Property Schedule" further reflects that Burley reported that it had acquired no vehicles since 1991 and no furniture, equipment, fixtures and other property since 1990. (SBH Ex. 14, p. 1) Bryan believes that the difference between the cost reported for vehicles on the "Tangible Personal Property Schedule" (\$ 17,997) and the figure

listed on the September 31, 1991 Statement of Assets and Liabilities for Burley Broadcasters, Inc. (\$ 35,507) was due to the sale of one vehicle, possibly in 1991. (SBH Exs. 13 & 14; Tr. 66) Bryan acknowledged that the year in which an asset is purchased is significant in that it determines the amount of assessment that is made. (Tr. 66-67) He also acknowledged that broadcast equipment normally does not appreciate in value, once installed. (Tr. 68)

The December 12, 1991 Letter from the Greene County Bank.

58. The December 12, 1991 letter from the Greene County Bank provided as follows:

This letter will confirm that Greene County Bank of Greeneville, Tennessee is committed to lend up to \$ 175,000.00 to Darrell Bryan for the purpose of constructing and operating a new FM radio station in Tusculum, Tennessee. Our willingness to provide this loan is expressly subject to a lien on all acquired assets as well as a pledge of all stock and subject to a grant by the Federal Communications Commission of a construction permit for a new FM facility allocated to Tusculum, Tennessee.

Greene County Bank will provide this loan to you with the understanding that it will be amortized over 15 years at Prime plus 1.50%. The Prime Rate is periodically adjusted and shall "float" during the period of this loan."
(SBH Ex. 6, p. 18)

59. Bryan testified that in estimating his initial operating costs he included no expense for debt service during the first month of operation, because he anticipated that no debt service would have to be paid on the bank loan until the second month of operation. (SBH Ex. 6, p. 8) However, the December 12, 1991 letter from the Greene County Bank contains no provision for any

moratorium on the commencement of repayment. (SBH Ex. 6, p. 18) Neither the direct testimony of Bryan nor that of Stan Puckett addresses this issue. (Bryan Ex. 6; Bryan Ex. 8)

60. As of January 6, 1992 and as of January 9, 1992, it had not been determined how long following disbursement of the proceeds of the proposed loan that repayment of the loan would commence. (SBH Ex. 6, p. 8) Indeed, even as of the date of Darrell Bryan's initial deposition in this proceeding, it had not been determined how long following disbursement of the proceeds that repayment of the loan would commence. (SBH Ex. 6, pp. 8, 23) Mr. Puckett testified that payments would be made monthly. (Bryan Ex. 6, p. 1) Bryan, however, testified that only quarterly payments would be required. (Bryan Ex. 8, p. 3) Both the December 12, 1991 letter and the September 9, 1993 letters are silent with respect whether and how often periodic payments of principal and/or interest are to be made. (SBH Ex. 6, pp. 18, 20)

While both Puckett and Bryan testified that payments would be interest only for the first year (Bryan Ex. 6, p. 1; (Bryan Ex. 8, p. 3), both the December 12, 1991 letter, as well as the September 9, 1993 letters are silent with respect to this special requirement. (SBH Ex. 6, pp. 18, 20)

The Requirement For The Pledge of Stock.

61. At the time of his initial discussions with the Greene County Bank and the issuance of the Bank's December 12, 1991 letter Bryan thought he would be filing his Application as a corporation, which he believes probably led to the inclusion in

the letter of the collateral requirement for the "pledge of all stock." (SBH Ex. 6, p. 12, 18, 24) Mr. Puckett confirmed that the requirement for a pledge of stock in the December 12, 1991 letter was intended to refer to stock in the licensee of the station. (SBH Ex. No. 7, p. 25)

62. Sometime between December 12, 1991, when he obtained the letter from the Bank, and the time he prepared and signed his Application, Bryan decided to file as an individual applicant. (Tr. 75) That decision would have been made during the week before Christmas of 1991. (Tr. 75) However, he did not advise the Greene County Bank that he had filed as an individual until September, 1993. (Tr. 75) In approaching the Greene County Bank in September, 1993, Bryan advised Mr. Puckett that he had not filed as a corporation and wanted to clarify that no pledge of stock would be required as a condition of the loan. (SBH Ex. 6, pp. 12, 25; Tr. 76) When Puckett advised him that it would not, Bryan asked him to confirm that fact in a letter. (Tr. 76) The language concerning the requirement for a pledge of stock contained in the Bank's September 9, 1993 letter was included at Bryan's request. (SBH Ex. 6, pp. 12, 20) The December 12, 1991 letter is silent with respect to any understanding that the stock pledge was optional or conditional in any respect; indeed, the letter indicated that the availability of the loan was "expressly subject" to such a pledge. (SBH Ex. 6, p. 18)

The Sale of WSMG.

63. At Exhibit 2 of his Application, Bryan represented that in the event his Application were granted, he would divest his interest in WSMG. (See: Exhibit A, Official Notice Requested) In his testimony, dated July 1, 1994, Mr. Puckett indicated that in the event Bryan's application is granted and WSMG had to be sold, the proceeds of the sale would be applied against the outstanding balance due on the loan and that any shortfall would be "folded into the FM station loan." (Bryan Ex. 6, p. 1) Mr. Puckett further indicated that at the time of his initial conversations with Bryan in 1991, "Mr. Bryan was not sure whether he would retain ownership of WSMG." (Bryan Ex. 6, p. 1) However, Puckett neither represented that Bryan discussed with him in 1991 the possibility that WSMG would be sold nor did he state when he first advised Bryan that any shortfall could be "folded into the FM station loan." Id.

64. In a letter dated February 15, 1994, which was written at Bryan's request, but which did not go before the Bank's executive committee, Mr. Puckett wrote: "It has come to my attention that Darrell Bryan has proposed to sell...WSMG, in the event he is granted a construction permit for a new FM station in Tusculum through the hearing process." (SBH Ex. No. 7, pp. 26, 29, 43) When asked when it came to his attention, Puckett immediately indicated that the fact that WSMG would be sold in the event Bryan's FM application was granted first came to his attention within a month of the date of the letter (February 15,

1994). (SBH Ex. No. 7, p. 27) Subsequently, he asked leave to amend his answer to indicate that he was not certain. (SBH Ex. No. 7, p. 27) In deposition testimony given on January 12, 1994, Bryan testified that as of that date, he had had no discussions with the Bank regarding the possibility that WSMG would be sold and had not been given any indication by the Bank that it would permit the sale of WSMG for less than the amount owed to the Bank:

Question: "You havent had any discussions with the bank, you said, so the bank hasn't given any indication to you, has it, that it would permit the sale of the station for less than what's owed?"

Answer: "No, I've had no discussion with the bank."

(Tr. 72)

This deposition testimony was given over one month prior to the date (February 15, 1994) on which Bryan obtained a letter from Mr. Puckett, indicating that the Bank would interpose no objection to the sale of WSMG and that the Bank would be willing to roll over any shortfall into the loan for the FM station. (Tr. 73) There is no reference, whatsoever, in the Bank's December 12, 1991 letter to any sale of WSMG or to any provision for the rolling over of any shortfall into the FM loan. (SBH Ex. 6, p. 18) Yet, Puckett confirmed that the Bank would have to release the stock of Burley Broadcasters, Inc., which is pledged to the Bank, or release the Bank's security interest in the assets of Burley Broadcasters, Inc. in order for WSMG to be sold. (SBH Ex. No. 7, p. 28)

65. Burley Broadcasters, Inc. does not own any assets other than WSMG. (Tr. 58) The building WSMG utilizes for its studios is not an asset of the corporation; it is owned by Bryan, personally, and the transmitter site is leased. (Tr. 58-59) Bryan proposes to retain a significant amount of the equipment, currently utilized in the operation of WSMG for use in the proposed FM. (Tr. 41, 45, 63-64, 87, 97-98) He also is intending to use the WSMG studio building building for the FM studio and, thus, the purchaser of WSMG will either have to share the current studios with the FM or find new studio facilities. (Tr. 97) While Bryan contended at hearing that the physical assets included in the sale were not really important and that the price the station would bring would be based more on established business and good will, he also acknowledged that he was not certain that accounts receivable would be included in a sale of WSMG and could not be until he knew what the terms of the sale would be. (Tr. 63, 108) Furthermore, with respect to the good will of the station, Bryan testified that he anticipates that the good will he has developed on WSMG will carry over to the new FM. (Tr. 96-97)

CONCLUSIONS OF LAW

I. Bryan's Estimated Costs Were Not Reasonable.

A. Bryan Failed To Engage In Reasonable Efforts To Ascertain The Costs Of Constructing and Operating His Proposed Station.

66. The record reflects that Bryan failed to engage in reasonable and customary efforts to ascertain his costs of construction and initial operation, resulting in the omission of some items and the understatement of the costs of others. Bryan did not obtain any written price quotations from any of the equipment suppliers he contacted, although he acknowledged that they would have supplied him with written quotations for all the items he was interested in, if only he had requested them, and that they would have been valid at the time he certified and filed his Application.

67. Bryan claimed to have calculated the cost of items for which he relied upon the Broadcast Supply West catalogue by deducting 20-30% from the listed prices, based on his past experience of receiving discounts and after confirming that discounts were still available. However, these were package discounts, premised on his purchasing a number of items of equipment at the same time, and while the discount may have applied to most, it did not apply to all of the items he was interested in. Bryan offered no evidence that the limited number of items he proposed to purchase from Broadcast Supply West would have been sufficient to trigger their quantity discount nor to

which of the items in question the discount would apply, if any.

68. Bryan's contention that the transmitter/antenna configuration would be "difficult to determine" until he was ready to construct the station is clearly erroneous, as evidenced by his inability to explain the nature of the difficulty. More importantly, it is belied by the fact that SBH was able to obtain numerous complete equipment proposals from equipment suppliers, which included fully coordinated transmitter/antenna/transmission line configurations, as did the Updated Estimate, prepared by Richard Mertz. Likewise, the Statement of Bryan's engineer, Mr. Lysiak, demonstrates that appropriate transmitter/antenna/transmission line configurations are easily determined by a competent engineer. Here, Bryan simply failed to seek any competent advice, not even bothering to confer with his own engineer. While it is true that applicants often modify their proposals at the time of construction, nothing precludes the development of a coordinated transmitter/antenna/transmission line configurations as part of a complete technical proposal prior to filing. Indeed, in the absence of such efforts, an applicant cannot make any reliable determination as to the probable costs of constructing the proposed facility or operating it, given that power costs are directly impacted by the power requirements of the transmitter. Yet, even as of January 12, 1994, Bryan still had not determined what transmitter/antenna configuration he was proposing. When asked whether he was proposing a 2 bay or a 6 bay antenna, he responded: "Whichever...

whatever is the best I could do at that point in time." (Tr. 74) Yet, the record reflects that significant cost differences exist between the higher powered transmitter required to drive a two bay antenna and the lower power transmitter that would be required to drive a six bay. This simply evidences what for Bryan was an apparently consistent unwillingness to focus on the real world considerations involved in budgeting for construction and operation of a new radio station. ¹/

B. Bryan Omitted Needed Equipment and Operating Costs.

69. The record establishes that in determining his total estimated costs of construction Bryan failed to include the cost

1. A striking example of Bryan's lackadaisical approach is reflected in his testimony regarding his proposed production studio: Bryan claimed to have sufficient equipment on hand to outfit a complete production studio for the FM, utilizing the equipment that he discussed at his deposition -- a reel to reel recorder and some cassette and CD players. (Tr. 92-93) When reminded that this equipment did not include a mixing console, he claimed to have "several mixers" on hand, while acknowledging that he had failed to mention any of them when asked at his deposition. (Tr. 93-94) When pressed, he acknowledged that it was not a console, but only a small mixer and that he was uncertain the one he had on hand in January, 1992 was stereo. (Tr. 94) Acknowledging that the program sources he is proposing to use are all stereo, he claimed that production does not necessarily have to be stereo, but later conceded that "some of that is not determined at this point in time." (Tr. 94-95) When asked whether he was intending to do monaural production for broadcast on a stereo station, Bryan indicated that he could, if he so desired. (Tr. 95) When asked whether that is what he had budgeted for, Bryan responded: "I didn't really -- that really wasn't budgeted as far as the -- that particular piece of equipment. It was budgeted for stereo." *Id.* He then suggested that, as an alternative, he could do production on the main studio console, during periods when the station was operating under automation. (Tr. 96) When reminded that the the automation system is run through the control board, Bryan said there were several channels and that the board could be bypassed, "if you need to." (Tr. 96) However, he acknowledged that the board he proposed, originally, had only four channel.(Tr. 96)

of purchasing: an FM modulation monitor, an RF amplifier, a second Scala parareflector antenna, the connectors for the transmission line to be used with his STL system, the mounting or grounding hardware for his main or STL transmission lines, monitoring speakers for his studio, equipment for pressurizing his transmission line and antenna and the nitrogen gas to be used for pressurization, lightning rods for the tower and fencing for the tower base and guy anchors, all of which were either necessary or inadvertently omitted. He also failed to include the cost of side lighting for his 300' tower, which is specifically required to be installed, pursuant to 47 CFR 17.25.

70. Bryan failed to include the price of preliminary field testing, which he proposed to undertake prior to construction to determine what transmitting equipment combination would provide the best coverage. He also omitted the cost of freight charges for delivery of the equipment from the manufacturer to the transmitter and studio sites, even though the Instructions to Section III of FCC Form 301, June, 1989 ed. [at D(1)] specifically require that freight charges be included.

71. In determining his estimated initial operating costs, as reflected in his Itemization of Costs, Bryan included no expense for debt service during the period of construction or during the first month of operation, because he anticipated that no debt service would have to be paid on the bank loan until the second month of operation. However, the December 12, 1991 letter from the Greene County Bank contains no provision for any moratorium

on the commencement of repayment. Neither the direct testimony of Bryan nor that of Stan Puckett addresses this issue. Furthermore, Bryan admitted that even as of the date of his initial deposition in this proceeding, it had not been determined how long following disbursement of the proceeds of the proposed loan that repayment of the loan would commence.

72. The record is clear that Bryan does anticipate drawing down a portion of the loan proceeds for purposes of constructing the proposed station prior to commencement of operations, which he suggested would involve a period of 60-90 days. In determining his estimated initial operating costs, Bryan budgeted \$ 1,934.44 per month for debt service, during the second and third months. (SBH Ex. 15, p. 2) Accordingly, in light of Bryan's failure to include debt service for the first month of operation and assuming the accuracy of Bryan's 60 to 90 day estimate for completion of construction, Bryan understated his costs for debt service by \$ 7,737.76 (4 months x \$ 1,934.44)

73. In determining his estimated initial operating costs, as reflected in his Itemization of Costs, Bryan included no expense for electric service during the period of construction or during the first month of operation. Yet, Bryan acknowledged that it will be necessary to have electric service before he constructs the station, possibly for a period of 60 to 90 days. Bryan anticipates that he also will incur costs in having electric service installed at the proposed transmitter site. In determining his estimated initial operating costs, Bryan budgeted

a total of \$ 200.00 per month for electric service for the studio and \$ 700.00 per month for electric service for the transmitter site during the second and third months. (SBH Ex. 15, p. 2) Accordingly, in light of Bryan's failure to include electric service for the first month of operation and assuming the accuracy of Bryan's estimate that electric service would be needed for 60-90 days prior to commencement of operation, Bryan understated his costs for electric service by at least \$ 1,500.00 (4 months x \$ 200 + 1 month x \$ 700), not counting the cost incurred in the installation of service at the transmitter site.

74. While Bryan included a cost item for telephone service, during the first month, the amount budgeted (\$ 50) was only one sixth of the amount budgeted for the second and third months (\$300). However, he conceded that basic telephone line charges would be the same each month and that he also would incur some installation costs. Accordingly, Bryan understated his costs for telephone service by at least \$ 150.00, not including whatever additional costs may be incurred for installation.

75. The monthly cost Bryan budgeted for "business insurance" was intended to cover equipment and liability insurance, including tower insurance, and was based his estimate on his insurance costs for WSMG, indicating that the amount budgeted was "a little more" than he is paying currently for insurance for WSMG. However, the height of the WSMG tower is only 122 feet, while the proposed FM tower will be 300 feet, almost three times taller. Accordingly, it must be concluded that Bryan's estimated

costs for insurance were not reliably determined, that serious questions remain unresolved regarding the reliability of that estimate, and that the amount budgeted may not simply be presumed to be reasonable and sufficient. In this regard it is noted that insurance is not simply optional. Bryan proposes to utilize a bank loan to construct the station and that loan will be secured by a lien on the physical assets. Security agreements typically, if not universally, require the debtor to maintain adequate insurance on all collateral. Yet, Bryan has budgeted for insurance premiums of only "a little more" than those he currently pays to insure WSMG, including a tower one third the height of the one he proposes to insure.

C. Bryan Understated The Costs Of Other Items.

76. In preparing his Itemization of Costs Bryan relied upon "used" prices for the following equipment items: 1 Mosely STL package, 1 Scala parareflector antenna, 1 ITC Delta Recorder. The price quotes for these three "used" items were provided orally by Hall Electronics. Bryan did not enter into any agreement with Hall Electronics or any other equipment supplier regarding the purchase of any "used" equipment or regarding their making any "used" equipment available at any specified price nor did Bryan enter into any agreement with any equipment supplier to hold any "used" equipment for purchase at a later date.

77. Where an applicant proposes to rely on used equipment, it must either demonstrate that it has such equipment on hand or or that the equipment it proposes to purchase is readily

available at a specified price:

An applicant is required to show that the essential items of equipment are either possessed or reasonably available at a cost which would not impair its financial qualifications. Although [the applicant] may have intended to obtain comparable used equipment, it is not sufficient simply to allege that comparable equipment is available.

United Broadcasting Co., 93 FCC 2d 482, 508 (1983) (reliance upon used equipment, without an adequate showing that such equipment continued to be available, rendered estimates "unrealistically low." at 509). Thus, simply "alleging" that particular items equipment are available used at market prices is insufficient to meet the applicant's obligation to reasonably ascertain construction costs. Wayne County Broadcasting Corp., 26 FCC2d 52, 55-56 (1970)(applicant claimed estimates were based on the prices of "good used equipment on the market," but possessed no evidence that such equipment was actually available at the specified costs). Therefore, inasmuch as Bryan proposed to rely on his ability to purchase used equipment, he was required to demonstrate both that the specific items of used equipment he proposes are readily available and that they will in fact be available for purchase by him at the price he has budgeted. Given his acknowledged lack of any written price quotations and the absence of any agreement with any supplier to sell him the required equipment at a specific price, Bryan was not in a position to rely upon used equipment at the time he certified his financial qualifications. His failure to offer any evidence at hearing that these particular items could be purchased used at

the price indicated, either in January, 1992 or presently, simply serves to confirm this conclusion.

78. Even though Exhibit E-2 of his Application depicts a 2 bay antenna, Bryan based his Itemization of Costs on the assumption that a six bay antenna would be utilized and, accordingly, he prepared no cost estimates for a transmission system utilizing a 2 bay antenna, a 3 bay antenna or a 4 bay antenna. Bryan's engineer, Garrett G. Lysiak, acknowledged that the values specified in Bryan's Application restrict him to an antenna containing no more than 4 bays. Although Bryan claims ignorance of this limitation, ignorance is no excuse, inasmuch as it resulted solely from Bryan's negligent failure to have any discussion, whatsoever, with his own engineer regarding his technical proposal. As a result, Bryan understated the cost of his transmitter. Replying on Bryan's stated intention to use a six bay antenna, Hall Electronics undoubtedly quoted him a price for a lower priced 3.0 kilowatt transmitter, which would have been entirely sufficient for use with a six bay antenna, but not with a 2-4 bay proposal.

D. Bryan Relied On Equipment On Hand, But Of Uncertain Availability.

79. Bryan also failed to include cost of purchasing certain equipment and furnishings on the basis that he already had these items on hand at WSMG, including: a 5 kilowatt Kubota emergency power generator, one vehicle, telephone equipment, production studio equipment, tables, chairs, desks and typewriters. However,

the Financing Statement reflects on its face that the property covered includes "all property used in the broadcasting business, now on hand or hereafter acquired" and the Bank's President confirmed that the Bank's security interest also covers replacements and that any equipment or other assets that are used in the operation of WSMG or any assets that are purchased with revenues generated by the station would be covered by the Financing Statement. The fact that as many as half of the checks written to pay the costs of prosecuting Bryan's application have been written on accounts of Burley Broadcasters, Inc. and the fact that those payments have been treated business expenses of the corporation belies any contention that any clear demarcation can be made between equipment purchased with Bryan's own funds and equipment subject to the Bank's security interest. Therefore, given the high probability that the "on hand" equipment, which Bryan proposes to use in lieu of purchasing new equipment, is subject to the Bank's security interest and constitutes a portion of the limited assets of WSMG, serious questions remain regarding whether these items, while on hand, are available for use in the construction of the new FM.

80. Given his failure to engage in reasonable and customary efforts to ascertain his estimated costs, his omission of needed equipment and operating costs, his serious understatement of the cost of other items and his reliance on equipment on hand, but of doubtful availability, it must be concluded that Bryan failed to reasonably ascertain the probable costs of construction and

initial operation of his proposed station and that it cannot be concluded that his estimated costs, as reflected in his Itemization of Costs, were reasonable. Bryan's failure to reasonably ascertain the costs of construction and initial operation of his proposed station precludes him from determining the amount of funds necessary to construct and operate. William S. Daugherty, III., 4 FCC Rcd. 2605 (RB 1989); United Broadcasting Co., 93 FCC 2d 482, 507-9 (1983)(omission of a number of cost items and reliance upon used equipment); Erwin O'Connor Broadcasting Co., 51 FCC 2d 1114, 1115-24 (1975)(omission of a number of important items from cost estimates); Dearborn County Broadcasters, 15 FCC2d 247, 248-50 (1968)(uncertainty in adequacy of estimated constuction and initial operating costs); Chapman Radio and Television Co., 7 FCC2d 557, 559-60 (1967)(uncertainty as to adequacy of estimated constuction and initial operating costs)

II. Darrell Bryan Failed To Demonstrate The Availability of Funds To Support His Financial Qualifications.

81. The Commission revised its financial certification standards in 1989 and made those changes effective in June, 1989. Revision of Application for Construction Permit (Form 301), 4 FCC Rcd. 3853 (1989) Thus, as the Commission pointed out in Northampton Media Associates, 4 FCC Rcd. 5517 (1989), while prior to June, 1989, an applicant need not have documentation supporting its financial certification on hand at the time of

certification, subsequent to the effective date of the 1989 revisions to Form 301 (i.e, June 26, 1989), an applicant is required to have documentation to support a certification of financial qualifications on hand prior to certification and cannot properly certify that it is financially qualified unless and until it has documentation supporting its certification on hand. Northampton Media Associates, supra. at 5519; Revision of FCC Form 301, supra. at 3859. In adopting the stricter financial qualifications/certification requirements in 1989, the Commission explicitly put applicants on notice that its standard regarding documentation supporting financial qualifications was being revised and that documentation would have to be on hand at the time of certification and filing. Revision of FCC Form 301, supra. at 3859. It did so again in Northampton, where it drew a clear distinction with respect to the documentation requirements applicable to applications filed under the the pre-June, 1989 standard versus those filed under the post-June, 1989 standard, under which a verbal commitment will no longer suffice to support a financial certification, even if subsequently confirmed in writing. In adopting its revised financial qualifications/certification requirements in 1989, the Commission also adopted revised Instructions to Section III of FCC Form 301. Revision of FCC Form 301, supra.

82. The June, 1989 Edition of FCC Form 301, which Bryan utilized, requires the applicant to certify at Section III. as to the total amount of estimated costs it will be required to meet

in the construction and operation of the proposed station, as well as the availability of committed sources of funding to meet its estimated costs, which sources the applicant is required to specifically identify. In addition the applicant is required to have on hand at the time of filing certain specified documentation to support such a certification.

A. Darrell Bryan Did Not Meet The Commission's Documentation Requirements With Regard To The Preparation Of Balance Sheets.

83. The Instructions to Section III of the June, 1989 Edition of FCC Form 301, provide at Item D(3)(a) that applicants are required to have the following documentation on hand before they can properly certify as to their financial qualifications:

A detailed balance sheet at the close of a month within 90 days of the date of application showing the applicant's financial position.

A statement showing the yearly net income after Federal income tax, for each of the past two years, received by the applicant from any source.

84. Bryan testified that, with the exception of the pro forma projection of revenues, his May 16, 1991 Financial Statement and the September 30, 1991 Statement of Assets and Liabilities for Burley Broadcasters, Inc., he did not prepare any other financial statements or balance sheets relating to the FM station or his own personal finances prior to the time he filed his Application. (Tr. 55) Accordingly, Bryan did not have on hand at the time of filing and does not now have on hand any "detailed balance sheet at the close of a month within 90 days of